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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.								
10/771,634	02/03/2004	Cynthia R. Aiken	3127 PUS	4111								
<div>7590 11/14/2007 KONSTANTINE J. DIAMOND 4010 E. 26th St. Los Angeles, CA 90023</div>			<div>EXAMINER HYLTON, ROBIN ANNETTE</div> <table border="1"><thead><tr><th>ART UNIT</th><th>PAPER NUMBER</th></tr></thead><tbody><tr><td>3781</td><td></td></tr></tbody></table> <table border="1"><thead><tr><th>MAIL DATE</th><th>DELIVERY MODE</th></tr></thead><tbody><tr><td>11/14/2007</td><td>PAPER</td></tr></tbody></table>		ART UNIT	PAPER NUMBER	3781		MAIL DATE	DELIVERY MODE	11/14/2007	PAPER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/771,634	Applicant(s) R. AIKEN, CYNTHIA	
	Examiner Robin A. Hylton	Art Unit 3781	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 December 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6,8,17-21 and 23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6,8,17-21 and 23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 December 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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## **DETAILED ACTION**

### ***Drawings***

1. The drawings were received on December 6, 2006. These drawings are approved by the examiner.

### ***Continued Examination Under 37 CFR 1.114***

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 20, 2006 has been entered.

### ***Claim Rejections - 35 USC § 102***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1-4, 8, 17, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Padovani (US 4,726,489).

Disclosed in the embodiment illustrated in Figs 5-6 is a container and lid assembly comprising a base **8**; a container body **7** having a generally tapered wall structure extending upwardly from the base defining a compartment therein; a lid **16** having a central portion and a flexible peripheral portion that is collapsibly deformable as the lid is moved along a predetermined range within the compartment toward the base, wherein the peripheral portion includes an outer portion **35** having an upper free end abutting an inner surface of the wall structure and a downwardly extending portion **34** having a lower end connected to a lower end of the outer portion.

***Claim Rejections - 35 USC § 103***

5. Claims 6 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Padovani in view of Warden et al. (US 5,402,908).

Padovani discloses the claimed container and lid assembly except for a handle formed in the central portion of the lid.

Warden teaches it is known to provide a lid with or without a handle formed in the central portion of the lid.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a handle formed in the central portion of the lid of Padovani as taught by Warden. Doing so assists with removal of the lid from the container.

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Padovani.

Padovani discloses the claimed container and lid assembly except is silent regarding the hinge being of reduced thickness.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the known technique of a reduced thickness hinge to the lid of Padovani to achieve the predictable results of a more flexible hinge portion.

7. Claim 19, 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Padovani in view of Mason, Jr. (US 3,954,178).

Padovani discloses the claimed container and lid assembly except is silent regarding a like container stacked on the lid of a first container and lid assembly. Padovani discloses instead nested containers.

Mason teaches it is known to provide a like container stacked upon a container and lid assembly.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to stack one like container upon another container and lid assembly as taught by Mason. Doing so provides smaller amount of needed storage and shipping space of multiple container and lid assemblies.

With regard to claim 21, the central portion includes a downwardly extending portion 38 connected to the flexible portion.

### ***Conclusion***

8. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F.R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art closures teaching features similar to those disclosed and/or claimed are cited for their disclosures.

10. In order to reduce pendency and avoid potential delays, Group 3720/80 is encouraging FAXing of responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

11. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely

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asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number 571-273-8300 on the date shown below:

Typed or printed name of person signing this certificate

\_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick, can be reached on (571) 272-4561.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). ). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
- Fee Questions (571) 272-6400
- Inventor Assistance Center (800) PTO-9199
- Petitions/special Programs (571) 272-3282
- Information Help line 1-800-786-9199
- Internet PTO-Home Page <http://www.uspto.gov>

/Robin A. Hylton/  
Robin A. Hylton  
Primary Examiner  
GAU 3781